

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

BROCADE COMMUNICATIONS SYSTEMS,)
INC., a Delaware corporation, and FOUNDRY)
NETWORKS, LLC, a Delaware limited liability)
company,)

Plaintiffs and Counterclaim Defendants,)

v.)

A10 NETWORKS, INC., a California)
corporation; LEE CHEN, an individual;)
RAJKUMAR JALAN, an individual; RON)
SZETO, an individual; DAVID CHEUNG, an)
individual; LIANG HANG, an individual; and)
STEVE HWANG, an individual,)

Defendants and Counterclaimants.)

Case No.: 10-CV-03428-LHK

ORDER GRANTING IN PART AND
DENYING IN PART PLAINTIFFS'
ADMINISTRATIVE MOTION TO FILE
UNDER SEAL

Presently before the Court is Plaintiffs' administrative motion to file under seal Plaintiffs' expert's declarations and associated exhibits in support of claim construction and summary judgment oppositions. ECF No. 408. Specifically, Plaintiffs seek to file Exhibits J, K, N, O, and P to the Declaration of Nitin Gambhir in Support of Plaintiffs' (1) Claim Construction Brief; (2) Opposition to Defendants' Motion for Summary Judgment of Non-Infringement of U.S. Patent Nos. 7,647,427 and 7,716,370; and (3) Opposition to Defendants' Motion for Summary Judgment of Non-Infringement of U.S. Patent No. 7,558,195. Plaintiffs also seek to file the Declaration of Izhak Rubin in Support of Plaintiffs' (1) Claim Construction; (2) Opposition to Defendants' Motion for Summary Judgment of Non-Infringement of U.S. Patent Nos. 7,647,427 and 7,716,370; and (3) Opposition to Defendants' Motion for Summary Judgment of Non-Infringement of U.S. Patent No. 7,558,195.

1 Plaintiffs contend that these documents contain confidential, privileged and trade secret
2 information including references to and analysis of both Plaintiffs' and A10's source code.
3 Plaintiffs also propose to file redacted versions of all documents to be filed under seal so that
4 public access to non-confidential materials will be provided.

5 As to the Gambhir Declaration, the Court agrees that Exhibits N, O, and P contain
6 confidential and trade secret information, including source code. Accordingly, the motion is
7 GRANTED as to these exhibits, and the Clerk shall file them under seal in their entirety. As to
8 Exhibits J and K, it is not clear on the face of these exhibits that they contain privileged,
9 confidential, or trade secret information. They bear no confidential or attorney's eyes only
10 designations. The declaration also does not state with whom these documents are shared or
11 whether they are publicly available. Accordingly, as to Exhibits J and K, the motion is DENIED
12 without prejudice. Plaintiffs may re-file their motion as to Exhibits J and K.

13 As to the Rubin Declaration, the Court finds that this entire document cannot be filed under
14 seal. In addition to containing confidential and trade secret information, this declaration contains
15 non-confidential information such as Dr. Rubin's education and experience; prior testimony and
16 compensation; understanding of the law; his opinion as to what the level of ordinary skill in the art
17 is; the list of documents he reviewed; and a background of the technology at issue in this case.

18 The Court notes that Plaintiffs have failed to comply with Civil Local Rule 79-5(c), which
19 requires that Plaintiffs lodge a copy of the document with the sealable portions identified, and
20 lodge and serve a redacted version of the document that can be filed in the public record if the
21 Court grants the sealing order. Plaintiffs have also failed to comply with the Court's standing order
22 of December 1, 2011, which requires a party to publicly e-file, as an exhibit to the administrative
23 motion to file under seal, a proposed public redacted version of the documents that the party is
24 seeking to file under seal.

25 Accordingly, the motion to file the declaration of Dr. Rubin under seal is DENIED, without
26 prejudice, and Plaintiffs may re-file their motion pursuant to Civil Local Rule 79-5(c) and the
27 Court's December 1, 2011 standing order.

IT IS SO ORDERED.

Dated: December 22, 2011



LUCY H. KOH
United States District Judge